UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1994/SR.29
26 August 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 August 1994, at 3.00 p.m.

Chairman: Mrs. Attah

later: Mr. Boutkevitch

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Discrimination against indigenous peoples

The administration of justice and the human rights of detainees

(a) Question of human rights of persons subjected to any form of detention or imprisonment;

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(b) Question of human rights and states of emergency;

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The meeting was called to order at 3.10 p.m.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 15) (E/CN.4/Sub.2/1994/31, 40, 47 and 52; E/CN.4/Sub.2/1994/NGO/15, 16 and 31; E/CN.4/Sub.2/1993/29 and Add.1 and 2)

1. Mr. LOTZ (Observer for Denmark) said that his Government and the Greenland Home Rule authorities had participated actively in the work leading to the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1993/29, annex I), which they supported in its entirety and especially the paragraphs concerning the right to self-determination. That right should be recognized without reservations and according to established international law.

2. His Government also agreed with the recommendation by the Working Group on Indigenous Populations that the draft declaration should be submitted to the Commission on Human Rights as soon as possible and hoped that it would be adopted by the General Assembly within the framework of the International Decade of the World's Indigenous People. It was also important that indigenous representatives should be fully involved in any further discussion of the text, as they had been at the Working Group stage.

3. With regard to the idea of a permanent forum for indigenous peoples within the United Nations, his Government and the Greenland Home Rule authorities had supported such a forum since it had first been suggested at the meeting of experts held at Nuuk, Greenland, in 1991. They had asked the Working Group to take up the issue and had prepared a discussion paper on the question of a permanent forum which had been considered by the Working Group and would be submitted as an official document to the Commission on Human Rights at its next session. On the basis of its discussions, the Working Group had decided to include the issue of a permanent forum in the Sub-Commission's agenda for its forty-seventh session as a separate item.

4. His Government agreed with the Working Group that an important aspect of the work of such a forum would be operational coordination and that it might best take the form of a separate body outside the United Nations human rights machinery, possibly a subsidiary body of the Economic and Social Council. At the same time, the Working Group should continue its work on the human rights of indigenous peoples, and further consultations concerning a permanent forum among indigenous peoples, Governments and experts should be encouraged with a view to preparing a presentation to the Working Group at its thirteenth session.

5. Mr. LILLO (Observer for Chile) said that indigencus peoples were among the most vulnerable of all the groups likely to suffer discrimination and human rights abuses and one whose situation called for special and urgent attention. Policies of assimilation adopted by some Governments had been the expression of a general intolerance towards cultures perceived as being different and had resulted in systematic attempts to suppress indigenous cultures and impose alien ones in their place. That had generated racist attitudes towards indigenous peoples and led to a progressive deterioration in their social and economic status and ultimately to severe human rights violations.

6. In Latin America and elsewhere, indigenous peoples had been virtually excluded from the political process and denied any possibility of economic development, often being deprived of their own land. The result was that they were often the poorest and most marginalized section of the population. Hence the great importance of the draft declaration produced by the Working Group in promoting and protecting indigenous rights. There was thus a particular need to scrutinize its provisions with a view to possible improvements.

7. One area which needed attention was the potential conflict between the principle of self-determination, on which the draft declaration was based, and the legitimate concerns of Governments to defend the sovereignty and protect the territorial integrity of their States. The Sub-Commission would need to consider ways of resolving that conflict in order to formulate a politically viable and effective way of accommodating the legitimate aspirations of indigenous peoples. It would also need to ensure that the process of deliberation on the draft declaration was not too lengthy, since a protracted delay in adopting it would send out the wrong political signal and would be a severe disappointment to the very groups who had put such high hopes in the protection it might provide and could have serious consequences for human rights. His Government was prepared to begin discussion of the draft declaration in the Commission on Human Rights without further delay.

8. The current policies of his Government towards its indigenous peoples were designed to reverse the previous policies of assimilation. The Indigenous Peoples (Promotion, Protection and Development) Act had created a new climate favourable to self-determination in local matters and to tolerance of cultural differences. The Act gave formal recognition to the existence of Chile's indigenous peoples and drew attention to the country's multi-ethnic and multicultural character. The new policies were in full accord with the Government's support for the draft declaration, which would be a useful basis for further work in promoting the rights of indigenous peoples and for exploring new ways of achieving self-determination.

9. A permanent forum for indigenous peoples would greatly assist the efforts being made to end discrimination against those peoples and to promote and protect their rights. Such a body would ideally involve the full and effective participation of indigenous representatives and would act as the United Nations organ responsible for reviewing the situation of indigenous peoples at the global level. His Government would continue to work with the United Nations and other interested organization's for the establishment of such a mechanism.

10. Mr. CROOK (Observer for the United States of America) said it was regrettable that effective means of ensuring that Governments respected the human rights of indigenous peoples had often been lacking. For that reason, the Sub-Commission should make every effort to complete its deliberations on the draft declaration at its current session and to submit it to the Commission on Human Rights at its fifty-first session with a view to having it adopted by the General Assembly during the early part of the International Decade of the World's Indigenous People.

11. The Chairperson and other members of the Working Group were to be congratulated on their work in preparing the draft declaration, the basic

objectives of which were fully supported by his Government. It was committed to establishing a relationship with the indigenous peoples in the United States based on recognition of and respect for their cultural identity and on partnership and consultation with tribal governments. It was, thus, determined that the draft declaration should be a strong and effective instrument for the promotion of indigenous rights. In order to do that, certain potential problems needed to be discussed and resolved, although none appeared to be insurmountable. His delegation would be guided in that discussion by its Government's own policies of developing self-determination for native American groups in the form of tribal self-governance and autonomy over a broad range of issues.

12. His Government was committed to working with all the parties concerned to achieve a solid and effective document which would advance the cause of indigenous rights everywhere. The time had come for Governments to begin their consideration of the draft declaration with a view to having it adopted with the minimum of delay.

13. Mr. CHANDRA (Observer for India) said that the draft declaration would be an excellent foundation for addressing the problems faced by indigenous peoples in protecting their rights, and the Working Group and especially its Chairperson, were to be congratulated on the work done.

14. Among the improvements which might usefully be made to the text were the establishment of a clear definition of the term "indigenous peoples". The term was not appropriate in India, or in many other countries of Asia or Africa, where all the inhabitants were "indigenous" in the sense that they had all lived there for several millennia.

15. It was very important that discussions on the draft declaration should not take place in a climate of confrontation between Governments and indigenous groups. Its basic objective should be the protection of the rights of indigenous groups, and that involved a number of elements such as territorial arrangements, issues of sovereignty over natural resources and the application of legal systems, all of which required careful consideration. Care would be needed to ensure that nothing was done which would actually have a negative impact on the life of indigenous people.

16. With regard to territorial arrangements, the degree of autonomy appropriate to a given indigenous community had to be judged in the light of what was necessary to maintain its own culture and separate identity, while protecting the rights of other population groups. It was vital that indigenous groups should participate fully in the national life of the countries in which they lived, so as to allow them to make the best possible use of available socio-economic infrastructures, but without forced assimilation.

17. An important element in protecting the rights of vulnerable groups was the promotion of tolerance and "affirmative action". In the Indian context, where the concept of indigenous people as such was not applicable, such affirmative action was provided for in the Constitution to help socially and economically vulnerable groups to overcome their disadvantages.

18. Among those constitutional safeguards were provisions to ensure effective representation of the socially and economically deprived in the legislatures and in the public service. In States where Scheduled Tribes were in a majority, no person who was not a member of a Scheduled Tribe was eligible for election to the State or national legislatures. The National Commission for Scheduled Castes and Scheduled Tribes had statutory powers to monitor and protect their rights. Disadvantaged groups also benefited from a wide range of programmes to alleviate poverty and promote development, including a Tribal Sub-Plan - part of the National Development Plan - which embraced literacy programmes, scholarships for disadvantaged students and employment creation schemes.

19. Mr. VERGNE SABOIA (Observer for Brazil) said that, once the Sub-Commission had completed its own deliberations on the draft declaration, the Commission on Human Rights would have the task of producing a politically and legally viable text which would accommodate both the legitimate aspirations of indigenous peoples in the context of human rights law and the specific principles set out in national constitutions and legislation. It was to be hoped that the Commission would start on that operation as quickly as possible and would establish a working group of its own to discuss the Sub-Commission's draft text. Such a working group would have to meet indigenous organizations and interested NGOs to maintain the open dialogue which had so far prevailed in the discussions on the draft declaration.

20. Many of the articles in the text, such as those related to the preservation of indigenous cultural identity and traditions and the development of the traditional economic structures and ways of life of indigenous peoples, were fully supported by his Government. There were other articles, however, that would not be acceptable in their current form to many Governments, including his own. It would be unrealistic to draft articles which could not be accommodated in the legal context - whether constitutional or legislative - of a given country.

21. More specifically, some of the provisions of articles 3 and 31, which would accord to indigenous peoples the right to self-determination as defined by international law, appeared to be based on new and insufficiently matured concepts which were not, as currently formulated, consistent with constitutional and international law practices. The concept of "indigenous peoples" as subjects of the rights included in the draft declaration appeared throughout the text. In that connection, references to the right of self-determination, as defined in article 1 of both the International Covenants on Human Rights, might lead to ambiguous interpretations incompatible with international law, the principles and purposes of the United Nations Charter and the basic principles of State sovereignty and territorial integrity, in that they might be interpreted as recognizing indigenous communities as subjects of international law and thus exempted from the jurisdiction of the States in which they lived. Further clarification was also needed regarding the meaning and extent of the concepts of autonomy and self-government in internal and local affairs, as set out in article 31.

22. Another potentially controversial concept in the draft was the expression "land, territories and resources" referred to, for example, in article 7.

That expression might better be replaced by the words "lands and natural resources" to reflect the diversity of situations and indigenous land-tenure regimes throughout the world. Furthermore, the notion of "territories", as it appeared in articles 10, 11, 25, 26, 27, 28 and 30, should not be interpreted as meaning a political entity distinct from the national territory to which it belonged.

23. In addition, further reflection was needed on the concept of the demilitarization of indigenous lands, the total prohibition of removal of indigenous groups from their lands and the access of indigenous people to procedures for the resolution of conflicts and disputes with States (art. 39). Articles 38 and 40, which aimed at ensuring access for indigenous people to international cooperation in protecting their environment and the productive capacity of their lands, did not adequately reflect the role which governmental agencies had to play in that field.

24. In conclusion, he hoped that his preliminary comments would help the Sub-Commission to improve the wording of the draft articles, which in turn would speed up the process of adopting a declaration on indigenous rights.

25. Ms. ABBAS (Observer for Pakistan), having welcomed the draft declaration and congratulated the Working Group on its achievement, said that her Government fully supported the right of indigenous peoples to determine their own future. The concept of self-determination was a cornerstone of the world order envisaged by the United Nations and an essential precondition for promoting basic human rights and international peace and stability. Wherever it was denied, strife and conflict tended to ensue.

26. The original concept of the right to self-determination, as enshrined in Articles 1 and 55 of the United Nations Charter and further elaborated in article 1 of the International Covenants on Human Rights, was recognized as a generally binding principle of international law. That right had been exercised initially by people under colonial domination. Most of those countries had since gained their independence but, in the post-colonial period, there had been instances of the denial of the right to self-determination, as in Afghanistan. More recently, old multi-ethnic States had collapsed, often violently, as ethnic groups had striven for independence. What was clearly needed was a consistent approach to the application of the right to self-determination.

27. The critical question concerned the balance between the legitimate aspiration to self-determination of a people and the preservation of the territorial integrity of the State. Clear guidelines were available in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and in a number of United Nations resolutions. Denial of the right to self-determination was generally regarded as a violation of basic human rights, but it was also a clear assumption of international law that self-determination should be the free expression of the will of the people, without external influence by a colonial or occupying authority.

28. While the concept of autonomy provided a useful means of overcoming political and economic disparities, it should not be used to undermine the

territorial integrity of legitimately constituted States, nor should it be used as a way of delaying the exercise of the right to self-determination by a people under colonial rule or to prevent a people under colonial rule from seeking independence or acceding to another State to protect their cultural and ethnic identity.

29. Mr. AARNIO (Observer for Finland) said that various questions crucial to indigenous persons and communities had been under consideration, especially the International Decade of the World's Indigenous People, the permanent forum for indigenous people, and the draft declaration on the rights of indigenous peoples. The draft declaration was a very important document, since the rights recognized in it would constitute the minimum standards for the survival, dignity and well-being of the world's indigenous peoples. It was to be hoped that the Sub-Commission would complete its consideration of the draft declaration at its current session and would submit the text to the Commission on Human Rights for consideration at its fifty-first session.

30. His delegation was in favour of the use of the concept of indigenous peoples, so as to meet the request of the indigenous peoples themselves. It also supported the use of the concept of self-determination of indigenous peoples in matters relating to their internal and local affairs, particularly in the cultural field, including traditional economic activities. In that context, his Government was preparing, in cooperation with the Sami Parliament, a bill on the cultural autonomy of the Sami in Finland. It was intended that the bill should pass through Parliament at the beginning of 1995.

31. His delegation's main concern regarding the draft declaration was related to the formulation of land rights. It considered the final text of article 26, as agreed upon by the Working Group, to be quite far-reaching, even in comparison with article 14 of ILO Convention No. 169, which made a distinction between lands traditionally occupied by indigenous peoples and lands not exclusively occupied by them. His delegation hoped that a similar approach would be adopted in the declaration.

32. Thanks were due to the Working Group on Indigenous Populations, and especially to its Chairperson, for the excellent preparatory work in the drafting process, which would ultimately be of enormous importance for the well-being of indigenous peoples and mutual understanding between them and Governments. His delegation hoped that the ongoing dialogue between the indigenous peoples and Governments would continue until the draft declaration was finally adopted by the General Assembly.

33. Ms. MULLENEUX (Observer for Australia) said her delegation welcomed the draft declaration on the rights of indigenous peoples, which represented a comprehensive and fair reflection of the aspirations of the world's indigenous peoples and provided an excellent basis for further work. The time had come for the text to be considered by Governments. Valuable though the content of the draft declaration might be, it would have little influence on government policies until it was adopted by the General Assembly. The establishment of international standards would make a real contribution to the protection of the interests of the world's indigenous peoples, and her delegation therefore

urged the Sub-Commission, at its current session, to refer the draft declaration to the Commission on Human Rights for consideration at its fifty-first session.

34. Her delegation shared the concern expressed by members of the Working Group and by indigenous organizations that the representatives of indigenous peoples should continue to be involved in the drafting of the declaration once it left the Sub-Commission. Being aware that many indigenous peoples' organizations did not have consultative status with the Economic and Social Council, it intended to propose, in the Commission on Human Rights, that the normal rules regarding the participation of NGOs in the deliberations of working groups of the Commission should be modified to permit the participation of indigenous peoples' organizations. Her delegation was also aware of the limited resources possessed by most indigenous groups. To that end, it would further propose, in the Commission on Human Rights, that any working group set up by the Commission to consider the draft declaration should be scheduled to meet immediately before the sessions of the Sub-Commission's Working Group, so as to enable indigenous peoples' organizations to attend both sessions and thereby increase their participation in the further consideration of the draft declaration.

35. Ms. PARK (Observer for Canada), having expressed her appreciation of the work done by the Working Group on Indigenous Populations, said that her delegation had been an active contributor to the provision-by-provision debates on the draft declaration within the Working Group, and had sought to share the knowledge which her Government had developed through years of research into matters of concern to the aboriginal peoples of Canada and the experience it had gained from the many processes in which it had been involved in response to the evolving relationships between itself and the Canadian aboriginal peoples.

36. Her Government had long recognized the need for an instrument to address the rights of indigenous peoples as part of the broad framework of universal human rights and fundamental freedoms. It supported the objectives of most of the provisions in the current draft, and the specific wording of many of them. Where her delegation had expressed concern regarding certain provisions, it had done so for the purpose of ensuring that the principles in the draft were clear and easily understood and able to accommodate the diverse circumstances of indigenous peoples worldwide.

37. At the twelfth session of the Working Group on Indigenous Populations, some indigenous groups had taken the view that the draft declaration should be considered at length in the Sub-Commission, because it required further changes, while others considered that it should be transmitted to Governments as it stood. That was a matter which the Sub-Commission would have to decide. While the draft could well benefit from the kind of expert consideration which the members of the Sub-Commission could provide, her delegation was very conscious of the importance of placing it before Governments as early as possible, since it could come into effect only after it had been adopted by States.

38. All indigenous groups had expressed concern as to how the document would be considered when it came before the Governments in the Commission on Human

Rights. Her delegation supported the full participation of indigenous representatives in the review of the draft declaration by the member States. In that connection, the suggestion had been made that a working group of the Commission on Human Rights, composed of government representatives, should be constituted to meet at Geneva just before the annual sessions of the Working Group on Indigenous Populations so as to facilitate the attendance of as many indigenous representatives as possible. Her Government supported that idea and hoped that more Governments would consider the possibility.

39. In the light of the importance attached by the indigenous groups to the early adoption of the draft declaration, it was also essential that the further process should be a productive one. Her delegation thus hoped that Governments and representatives of indigenous peoples would find innovative ways to cooperate. Consideration could be given, for example, to consolidating the number of interventions made, perhaps by joining together to coordinate statements and by dealing with issues along thematic lines.

40. In April 1994, officials of her Government had held an initial meeting with Canadian aboriginal representatives to discuss the concerns which Governments had regarding certain provisions of the draft declaration. The aboriginal representatives had, in turn, explained why the positions which they had adopted were important from their perspective. From that promising start, her Government hoped to deal with all the issues of the draft declaration at meetings designed to develop a consensus within Canada.

41. Ms. RAMLI (Observer for Malaysia), referring to the document on transnational investments and operations on the lands of indigenous peoples (E/CN.4/Sub.2/1994/40), said that the allegations made therein against South-East Asian transnational corporations operating on indigenous peoples' lands in Asia and some parts of Africa were sweeping statements not substantiated by the facts.

42. Moreover, the allegations that the conduct of South-East Asian transnational corporations had resulted in more negative socio-cultural impacts than those of transnational corporations with headquarters in the North, simply because the latter were more likely to be scrutinized by their shareholders and the media, not only constituted bias and a patronizing approach but also cast aspersions on the institutions of the South, implying that the shareholders of South-East Asian companies were concerned only with making profits while those of companies with headquarters in the North had a high sense of social responsibility. It also implied that the media of the South were less concerned about such alleged exploitation than their counterparts in the North. Consequently, that part of the report was less than objective, since it reflected the bias of the North against the South.

43. Mr. LEE (Grand Council of the Crees), also speaking on behalf of the International Organization of Indigenous Resource Development, expressed the great interest of the organizations he represented in seeing the draft declaration on the rights of indigenous peoples formally approved by the General Assembly. That would not, however, be accomplished most quickly by simply having the Sub-Commission forward the existing draft declaration immediately to the Commission on Human Rights. More time needed to be spent on adequate preparation.

44. In the rush to send the draft declaration to the Commission, there had been no time to prepare the necessary documentation that would place it within the juridical framework of United Nations human rights instruments and supply the relevant supporting information on the situation of the world's indigenous peoples. That work had to be done before the draft declaration was sent forward; to transmit it without such information would be irresponsible and might damage its prospects of being approved by the higher United Nations bodies. In a written submission (E/CN.4/Sub.2/1994/NGO/31), the Grand Council of the Crees requested the preparation of an annotated version of the draft declaration containing a juridical explanation of the text as approved by the Working Group, indicating the rationale therefor, and of a compilation of the information received by the Working Group on the conditions in which indigenous peoples lived. That was needed to justify the adoption of a declaration on the rights of indigenous peoples by the United Nations.

45. While the technical review of the draft declaration (E/CN.4/Sub.2/1994/2) prepared by the Secretariat was a useful document, it did not accomplish the purposes of the two supporting documents which the Grand Council was proposing. For example, with respect to the important and controversial questions relating to article 3 of the draft declaration on the right to self-determination, the technical review stated only that the draft was consistent with the language used in article 1 of the International Covenants on Human Rights. Obviously, much more information was required.

46. He was not proposing that the Sub-Commission should attempt to amend the draft declaration. The drafting work had already been done, and well done. Rather, the organizations he represented were asking that the work should be done to prepare the ground in the Commission so that the draft declaration could be fairly and reasonably considered. The Working Group could be requested to prepare such supporting documentation based on the information currently available. After 12 years of work on the draft declaration, one more year of preparation would be a year well spent.

47. The organizations he represented reiterated their position on the programme of action for the International Decade of the World's Indigenous Peoples submitted to the Technical Meeting on 22 July 1994 (E/CN.4/AC.4/1994/TM.4/CRP.7). They believed that there must be indigenous involvement in every aspect of the International Decade, as well as coordination with other concurrent United Nations international decades. The indigenous initiative for peace, also contained in part in the document he had mentioned, provided for a detailed year-by-year programme of activities for the Decade. The International Organization of Indigenous Resource Development recommended that the Decade should focus on the United Nations treaty study and on the establishment of a permanent United Nations forum for indigenous peoples in order to ensure that the International Decade was as successful as possible. The United Nations should fully support the programme of action with financial and human resources.

48. Several different proposals had been submitted by indigenous representatives concerning the permanent United Nations forum for indigenous peoples. An international seminar should be convened, at which the indigenous peoples should be invited to consider and decide on what would be the best forum. It must be effective, with authority to sanction.

49. The organizations he represented were very concerned about the United Nations treaty study. It was their understanding that Mr. Alfonso Martínez would be submitting his final report in 1995 and urged that he should receive all the resources required to complete it. The recognition of the Crees' treaty with the British Crown (Treaty No. 6) as an international agreement was very important. Since the ongoing treaty obligations had been undertaken by the Crown on behalf of Canada, the current political circumstances in Canada were of considerable concern. Any unilateral alteration of the situation of the Crown on behalf of Canada would be an international violation of Treaty No. 6 and must be regarded as such when the right to self-determination was being considered.

50. Mr. LINDGREN ALVES said he welcomed the fact that the Sub-Commission was at last discussing the draft declaration on the rights of indigenous peoples and congratulated the Working Group on its efforts. He had the impression that most members of the Sub-Commission were in favour of transmitting the document to the Commission on Human Rights as it stood, while the NGOs and government observers were divided on the issue. However, the draft declaration was unlikely to be accepted by the Commission in its existing form and it might be better to retain it within the Sub-Commission for further consideration in the light of the statements made by the various government observers.

51. Although the draft declaration prepared by the Working Group was wide-ranging, it was still not comprehensive, since it contained no reference to the rights of indigenous women. In fact, a group of indigenous women had contacted a government observer, asserting that they had not dared approach the Working Group out of fear of what the indigenous men might do. He had the text of the indigenous women's proposals, which the Sub-Commission should take into account before the draft declaration was sent to the Commission.

52. One of the most controversial articles of the draft declaration was article 3, and an effort should be made to solve that problem before the draft was transmitted to the Commission. If some important misgivings and disagreements could be overcome, the draft would certainly be more sympathetically received at the higher levels of the United Nations.

53. The CHAIRMAN, speaking in her personal capacity, asked whether article 43 of the draft declaration was not sufficient to cover the rights of indigenous women.

54. Ms. DAES, Chairperson-Rapporteur of the Working Group on Indigenous Populations, expressed her gratitude to her colleagues in the Sub-Commission, the representatives of the indigenous NGOs and the government observers for their valuable comments. As Mr. Eide had stated, the submission of the draft declaration was an important occasion for both the Sub-Commission and the indigenous peoples. The draft declaration was not perfect and never would be.

55. The Working Group which, with some 790 participants, was more like a community had agreed on many constructive points but on some matters opinions still differed. She recognized the validity of the position adopted by some Governments, particularly with regard to article 3, but, as Mr. Eide had pointed out, self-determination had different meanings for different groups

and in different situations. Nevertheless, despite the difficulties that had emerged, the Sub-Commission could not continue with its work on the draft declaration for ever and it should transmit the text to the Commission.

56. Commenting on some of the points raised by speakers, she pointed out that, at the most recent session of the Working Group, two out of five meetings had been devoted to statements on the draft declaration by the representatives of indigenous groups. For the kind of analysis involved, reference should be made to the explanatory note contained in document E/CN.4/1993/26/Add.1, which a representative of the Crees had considered to be excellent. In any case, all the members of the Working Group supported the full and active participation of indigenous peoples in the drafting work. A draft resolution was being submitted requesting the Commission on Human Rights to find a way of allowing the representatives of indigenous peoples to participate, regardless of their official status. An effort would also be made to arrange for a further analysis of the different interpretations of the draft declaration.

57. She had completed her preliminary report on the protection of the heritage of indigenous people (E/CN.4/Sub.2/1994/31). The work had been based on discussions in the Working Group over many years, on discussions at two Canadian universities, and on documentation supplied by indigenous groups, whose aspirations had been fully respected. She hoped that the Sub-Commission would decide that the report should be submitted to Governments, to indigenous communities and nations, to the specialized agencies and to intergovernmental and non-governmental organizations for their comments. After she had considered those comments, she would prepare a final report for 1995.

58. Mr. LINDGREN ALVES asked the Sub-Commission's permission to read out the proposals put forward by the group of indigenous women.

59. After a brief discussion in which the CHAIRMAN, Mr. EIDE, Mrs. GWANMESIA and Mr. BENGOA took part, it was agreed that it should be left to the Permanent Mission of Honduras, which had prepared the text, to present it to the Commission on Human Rights.

60. Mr. QUAUNINE (Observer for Bangladesh), making a statement equivalent to the right of reply to Anti-Slavery International, said that the people of Bangladesh, including both the plains people and the hill people, were equally indigenous to the land. There were 13 distinctive tribes in the Hill Tracts and 13 additional tribes living outside the Chittagong Hill Tracts. There was no Jumma denomination.

61. His Government was committed to finding a peaceful political solution and had engaged in a dialogue with the Jana Sanghati Samity (JSS). There had been progress in substantive matters and also regarding the repatriation of tribal refugees from India. According to Mr. Nitish Dewan, a former member of the JSS, that group had a negative attitude towards finding a solution to the persistent Hill Tracts problem. He would like to emphasize that the dialogue with the JSS continued in earnest and that another round of talks between the Parliamentary Committee and tribal representatives had been scheduled for later in the current month.

62. Regarding the repatriation process, it was difficult to understand why an otherwise smooth operation should be complicated by the involvement of outside parties. Developments were being constantly monitored. The Government was providing each returning family with an assistance package consisting of a cash grant of Tk 10,000, 18 pieces of cast-iron sheets and 84 kilos of rice per month for a period of six months.

63. The Government of Bangladesh was an elected democratic Government which was accountable to its people and was a party to major international human rights instruments. He wondered, however, if it was not time to look into the credentials of certain self-styled NGOs for some semblance of accountability.

64. The CHAIRMAN said that the Sub-Commission had concluded its general debate on agenda item 16.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRAIL;

(e) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

(agenda item 10) (continued) (E/CN.4/Sub.2/1994/22-24, 25 and Add.1, 26, 42 and 44; E/CN.4/Sub.2/1994/NGO/6, 8, 10 and 28; E/CN.4/Sub.2/1993/25)

65. Mr. EAGANS (International Human Rights Association of American Minorities) said that his organization wished to address the issue of political prisoners in the United States and the unequal administration of justice between Caucasians and minorities in that country.

66. The World Council of Churches had reported that over 400 persons remained incarcerated as political prisoners in the United States. Many had been convicted of crimes although the evidence existed to exonerate them. The sole basis for conviction had been either their opposing political views or opinions which had served to disturb the stability of existing institutions.

67. The 1960s in the United States had seen the growing awareness and consciousness of African-Americans as a people with the right to self-determination. From that consciousness, the Black Panther Movement had grown and challenged everything in America, including in particular the sacred cow of capitalism. The Panthers had been branded by J. Edgar Hoover, Director of the Federal Bureau of Investigation, as the most dangerous threat to national security.

68. An example of the abuse of the human rights of minorities included the case of Elmer Gerard "Geronimo" Pratt, a former Deputy Minister of Defence for the Panthers' Southern California chapter, who had been charged with the assault and attempted murder of Kenneth Olsen, a white man, and the murder of Caroline Olsen, his wife. FBI documents, which could have confirmed that Mr. Pratt had been under surveillance in northern California at the time of the murder in southern California, had mysteriously disappeared. He had been convicted on the testimony of a police informant, who had been expelled from the Panthers by Pratt. Pratt had been sentenced to life imprisonment, when others committing two or three murders had been sentenced to 18 years at most.

69. Other facts illustrating the pattern of abuse were that 40 per cent of those incarcerated in the United States and 40 per cent of the inmates on death row were African-American. In 9 out of the 10 times that the Justice Department had sought the death penalty under the 1988 Federal "Drug Kingpin" Law, the defendant had been an African-American or Latino. Documentation of the disparity in the application of the death penalty to minorities had been a valid issue before the United States Supreme Court.

70. Shortly before his departure from the Supreme Court, Justice Blackman had refused to rule in any further death penalty cases. His attitude had been that the system was incapable of administering such a final judicial measure equitably. Many times the minority defendant had been tried before an all-white jury due to the elimination by prosecutors of black persons from the list of prospective jurors. Such occurrences had been ruled to be inherently illegal.

71. His organization recommended that the Special Rapporteur on racism and racial discrimination should be given a mandate to study the administration of justice concerning minorities.

72. Mr. Boutkevitch took the Chair.

73. Mr. VITTORI (Pax Christi International) said that it was a tradition of his organization to make it possible for persons who had suffered cruel, inhuman or degrading treatment to testify regarding their experience. That contribution to the rehabilitation of the dignity of a victim did not imply a blanket condemnation of the country or people concerned.

74. Mr. EL KHADIR (Pax Christi International) said that he wished to express his gratitude to the untiring efforts of Amnesty International, to which he owed his freedom, and to Pax Christi International, whose hospitality had made it possible for him to appear before the Sub-Commission.

75. He was a Saharan citizen. At 4 a.m. on 17 March 1976, he had been brutally seized and transported to a police station in Agadir, Morocco. On 21 March, together with five other Saharans, he had been taken to the infamous Derb Moulay Chrif interrogation centre at Casablanca, through which all political detainees in Morocco had to pass, where he had been tortured.

76. On 6 August 1976, he had been transferred to the secret detention centre at Agdez where he had spent four years and two months confined in a tiny cell, 4 m by 3 m in size, ventilated only by small holes high in the wall, with an

old mat to sleep on and an iron pail to serve as a toilet. Those conditions, combined with inadequate and unsuitable food, had caused a serious deterioration in his health. He had then been sent to the Kalaat M'Gouna prison. Altogether he had spent 15 years, 3 months and 26 days in different Moroccan secret detention centres before his release in June 1991.

77. During the entire period of his captivity, he had been subjected to extreme forms of torture including suspension from a horizontal metal bar with hands and feet bound, flagellation of the soles of the feet, electrical shocks to sensitive parts of the body and submersion of his head in a mixture of detergent and urine. He and his fellow Saharans had barely survived on an utterly inadequate diet which had reduced them to skin and bones. Of the Saharans imprisoned with him, 52 had died of malnutrition and a variety of diseases; 6 others had died a few days after their liberation from the effects of tuberculosis, pneumonia, digestive troubles, ulcers and other diseases.

78. Shortly before their release, however, the prisoners had received better treatment in order to improve their physical condition and make them more presentable to the public.

79. He had never been tried, still less sentenced by a court, and he had not been compensated for all the violations of his human rights. In Morocco, nobody was safe from the excesses of the administration. The impartiality of justice was a fiction in Morocco. The only recourse available to the hundreds of unfortunates wasting in Moroccan prisons was the pressure of the international community.

80. Mr. JOSEFOVSKI (International Association Against Torture) said that one of the key themes of the 1993 Vienna Declaration and Programme of Action had been a commitment to a single standard of enforcement in the administration of justice. His organization believed that it could help to fulfil that commitment by examining the issue in an area where there was a clear contradiction between pronouncement and practice, namely, the United States of America.

81. A recent report by the United States Department of Justice stated that there were almost 1 million inmates currently in United States federal and State prisons; a disproportionate percentage of those prisoners were Black and Latino. Those were the products of the urban slums across the country. There were also, however, some 200 who could be legitimately classified as political prisoners or prisoners of war. Those were revolutionaries who had reached the conclusion that the appropriate path was to resist rather than succumb to those slum conditions. The United States was violating the human rights of both categories of prisoners.

82. Among the issues which reflected the larger problems of the criminal justice system was that of the death penalty. While the rest of the world had retreated from its use, the death penalty was being increasingly inflicted in the United States. Most of those facing the death penalty were Black and Latino. The determination of the United States to defend its retrograde position on the death penalty was embodied in its refusal to withdraw its reservation to article 6 of the International Covenant on Civil and Political

Rights, thus preserving its right to execute juvenile offenders. In 1993, four juveniles, two Black, one Latino and one white, had been put to death in various States of the Union.

83. A further problem area was the brutality and corruption of law enforcement, as illustrated in a recent report on the police force of the City of New York. The report had found a wilful blindness to corruption and the presence of well-organized police crews terrorizing minority neighbourhoods. The bail system also discriminated against Blacks and Latinos.

84. Another reality was that the United States had over 200 political prisoners representing many minority groups. They had taken up positions of leadership in the campaign to change the conditions of the urban slums throughout the United States. The United States was very clear about who they were and what they represented and was determined to undermine any potential support they might receive through portraying them simply as criminals, although everything about their treatment spoke to the system's recognition of them as revolutionaries. For example, they had been subjected to show trials where security measures had been so extreme that any presumption of innocence of the accused had been eliminated. They had been confined to super-maximum security prisons like the Marion Penitentiary in Illinois, where they were locked in their cells for 23 hours a day. They also received prison sentences significantly longer than those received by non-political persons convicted of the same offences.

85. His organization urged that the Sub-Commission adopt a resolution directing the appropriate special rapporteurs and/or working groups to investigate the United States administration of criminal justice in general and the situation facing political prisoners/prisoners of war in particular.

86. Mr. AHMAD (World Muslim Congress) said that there was scope for amplification on the issue of exceptions to public hearing in cases involving public order or national security mentioned in the final report of the Special Rapporteurs on the right to a fair trial (E/CN.4/Sub.2/1994/24).

87. Ugly real-life examples of what could happen when public hearings were eliminated included the Terrorist and Disruptive Activities Act (TADA) under which Indian-held Kashmir was administered. That legislation had been used extensively to detain political opponents of the Government. A second law, the Jammu and Kashmir Public Safety Act, allowed people to be detained without trial for up to two years; the detainee had no right to counsel and was not allowed to confront the witnesses against him. The Jammu and Kashmir Disturbed Areas Act (1990) banned public demonstrations, forbade assembly of five or more persons, and gave the police authority to shoot to kill anyone presumed to be disturbing public order. The fourth example was the Armed Forces (Jammu and Kashmir) Special Powers Act (1990), which authorized non-commissioned officers to shoot to kill any person who, in their view, was acting in contravention of law or order; arrest without warrant any person on reasonable suspicion; enter to search without warrant any premises to make arrest and stop, search and seize any vehicle suspected of carrying a proclaimed offender.

88. The immunity of the Indian armed forces for the excesses committed by them under those laws had had a devastating effect on the people of Kashmir. The entire valley had become a huge detention camp, where 30,000 people were being detained without trial while the area had been made inaccessible to international human rights organizations.

89. The continuing gross and persistent violations of human rights of the people of Kashmir by the government machinery had been facilitated and sustained by the enactment of the laws in question. Without those laws, the incidences of violations of human rights would be greatly reduced. He hoped that his recital of those events would clarify the concern of his organization regarding exceptions to the public-hearing procedure.

90. Mr. XIAO Qiang (International League for Human Rights) said that, in many societies, the independence of the judiciary, the administration of justice and the rights of detainees were being jeopardized by government political control.

91. In 1994, human rights NGOs had documented over 220 previously unknown cases of people who had been arrested in the crack-down in Beijing and who still remained in jail. His organization had serious doubts as to whether any of those inmates had received fair trials. There was no presumption of innocence in Chinese courts, conditions of pre-trial detention were often very abusive, coerced confessions were common, sentences were frequently decided by Party committees prior to the hearing of evidence and judges were generally more versed in the exigencies of politics than in the requirements of law.

92. The principal objective in the trials of offenders such as the 220 mentioned was clearly the suppression of political enemies rather than the administration of justice. In the circumstances of the 1989 crack-down, questions had arisen as to whether some acts charged as criminal might actually have been carried out in legitimate self-defence.

93. A new and disturbing pattern of arbitrary detention had recently emerged in China. The Government was increasingly holding human rights, labour and political activists in prolonged incommunicado detention without informing their families of their whereabouts or, in some cases, even acknowledging their arrest. Human rights NGOs had documented many arrests of human rights activists in China since the beginning of 1994. In the cases of 17 individuals who were still in custody, only one family had been told where they were being held.

94. Repeated procedural violations in political trials had left detainees in prolonged detention. On 14 July 1994, after more than two years in incommunicado detention, 15 members of the Liberal Democratic Party of China, the China Progressive Alliance and the Free Labour Union of China had been put on trial in Beijing, charged with various types of counter-revolutionary offences. Their trial, the largest group trial since the prosecution of the Tiananmen Square defendants, had been delayed at least twice for political reasons.

95. His organization requested the Sub-Commission to adopt measures to encourage Governments to remedy violations of judicial process which often also violated their own domestic law and resulted in severe abuses of the rights of detainees. All Governments, including the Government of the People's Republic of China, should end political control over their legal systems and his organization urged the Sub-Commission to work towards that end.

96. Ms. PARKER (International Educational Development, Inc.), referring to the situation of arbitrary detention and other serious violations in the administration of justice in Kashmir, said she welcomed Mrs. Palley's initiative to secure discussions under the auspices of the Secretary-General to resolve the Kashmir dispute.

97. She wished to refer also to some forgotten victims of the Second World War, namely, the Latin American Japanese. Between 1942 and 1945, the United States had seized 2,264 people of Japanese ancestry from 12 countries in Latin America, 80 per cent of whom had been Peruvian. They had been shipped to detention and hard labour camps in Panama and the United States; some had been exchanged for Japanese-held prisoners of war. Most of the surviving Latin American Japanese had been excluded from the United States Government programme to compensate United States Japanese for their internment.

98. On 24 July 1994, a member of the Nicaraguan National Assembly, Mrs. Leticia Herrera, had been seized in Miami airport while in transit from Caracas. She had been arrested, interrogated, had her diplomatic passport and personal effects taken and was not allowed to communicate with her family or attorneys. Information that she had travelled to Cuba as a representative of her Government was grounds to consider her a "terrorist". That case was not unique. The United States regularly seized people having entry visas to Canada as political asylum-seekers and returned them to the places from which they had fled. Her organization urged the Sub-Commission to condemn that practice.

99. Mr. RODRIGUEZ-MEJIA (Andean Commission of Jurists) said that such factors as pressure and interference from politicians, limited resources, a lack of suitable personnel and corruption had produced in the Andean region a weak judiciary which was incapable of solving the region's acute problems of social conflict and political violence. A particularly serious problem was the existence of special courts and emergency legislation which limited the judicial guarantees that should govern all legal processes.

100. The public-order courts, since renamed regional courts, that had been established in Colombia to combat terrorism and illegal drug trafficking and the powers given to military courts in Peru to judge civilians accused of terrorism had rendered possible many abuses in trials where the anonymity of judges and witnesses and the secrecy of the evidence, together with limits on the rights of the defence, ran counter to the right to due process. In several countries, military courts had the competence to try cases of human rights violations by members of the security forces, which resulted in a manifest situation of impunity and a virtual lack of sanctions for the authors of those crimes.

101. In that regard, the draft body of principles on the right to a fair tr and a remedy, contained in annex II to the final report by Messrs. Treat and Chernichenko (E/CN.4/Sub.2/1994/24), was inadequate. In the first place, th principle that civilians should not be judged by military courts should be established. Military courts, where they existed, should deal solely with strictly military offences. On the other hand, common offences committed by members of the armed forces, should fall within the competence of the ordina civilian courts, regardless of where they had been committed.

102. Despite the grave problems which he had briefly described and the numerous reports and worthy recommendations made on the subject, there was a manifest lack of political will on the part of the States concerned to adopt measures to remedy the situation.

103. Mr. BARUA (Liberation) said that very grave human rights violations wer still being perpetrated in Bangladesh, with the Jumma people of the Chittagon Hill Tracts being the main victims. The very heavy militarization of the region had led to a dramatic increase in arbitrary arrests and detention, torture and deaths in custody. Several Jumma people had, since the beginning of 1994, been arbitrarily arrested and detained on false allegations of being supporters of the Peace Force Movement; some of them were still in detention. The Special Powers Act of 1974, which empowered the Government to speed up trials, arrest people on suspicion of endangering public safety and mete out "effective punishment", was in flagrant violation of article 32 of the Constitution of Bangladesh. The Working Group on Detention should exert pressure on the Government of Bangladesh to recognize and respect the human rights of the Jumma people.

104. Mr. NAIPOSPOS (Regional Council on Human Rights in Asia) said he was a victim of the repressive Indonesian regime, having been one of its hundreds o political prisoners. He was a student who had been sentenced to eight and half years' imprisonment in 1989 for holding discussions on social and political affairs and reading books by Indonesia's most outstanding writer, whose works were all banned.

105. He had been conditionally released three months previously, after nearly five years in jail. If, during the next four years, he committed anything regarded as unlawful by the authorities, he would be returned to prison to serve the rest of his sentence. His visit to Geneva was thus not without risk; on his return home, he could be arrested and sent back to prison for having criticized the Indonesian regime to the United Nations, which was regarded as a political crime.

106. He then went on to give examples of the cases of political prisoners in Indonesia and East Timor. The simple act of peacefully demonstrating in the streets landed people in jail. There was no such thing as freedom of expression in Indonesia. Organizing workers in defence of their rights was a "criminal offence". Trials in Indonesia were not fair trials. The judiciary was not independent and there was no recognition of the separation of powers. All judges were government officials who were required to be members of the Government party and its civil servants union.

107. Many East Timorese were in prison, most of them for taking part in peaceful demonstrations. There were also many Muslims, Achehnese and West Papuans serving sentences on political charges. He wished to draw special attention to the case of six men being held in Cipinang prison. They had been arrested as Communists in the late 1960s, sentenced to death in the early 1970s and had been imprisoned ever since. They were elderly and some were seriously ill, yet they were still in prison, under sentence of death.

108. Hundreds of thousands of people who had been arrested after 1965 had been held without trial for many years and released in the 1970s. None of them had been granted compensation for unlawful arrest. Although they were no longer prisoners, they suffered gross discrimination, could not get jobs in most sectors, and had still to attend "indoctrination courses". Worse still, their children were the victims of discrimination.

109. He appealed to the Sub-Commission to hold the Indonesian regime responsible for its grave human rights violations during the past 20 years, which were still continuing, by passing an appropriate resolution. It might, in fact, request the Commission on Human Rights to appoint a special rapporteur on the situation in Indonesia.

110. Mr. ANWAR (World Federation of Democratic Youth) said that scores of possible prisoners of conscience were among the hundreds of people arbitrarily detained during the army "clean-up" operation targeted specifically against the Mohajir nation and its representative political party in the southern province of Pakistan. The courts were unable to provide fair trials for the victims of that operation. Thousands of people had reportedly been tortured in police or army custody and there were numerous cases of extrajudicial execution. Many people had allegedly been detained solely because they were relatives, friends or sympathizers of party members who were sought by the authorities. Many of those detained had been tortured to extract information, sign false statements or change their political allegiance. Even elected members of Parliament had not been spared.

111. Amnesty International reported that the police had also arrested dozens of women, allegedly to rape them. Those who resisted rape were reportedly charged with the Islamic offence of zina (adultery), under which release on bail was not permitted. It was fashionable for totalitarian States to accuse people or groups of people of being terrorists and separatists when the States did not wish to grant them their fundamental and constitutional rights but, instead, suppressed them by brutal force. Pakistan was no exception.

112. Ms. FURTER (International Federation of University Women) said she regretted that the Special Rapporteurs' preliminary report on opposition to the impunity of perpetrators of violations of economic, social and cultural rights (E/CN.4/Sub.2/1994/11) did not contain any reference to the right to equal education of women and girls and their right to a higher education, or to the consequences of violation of those rights.

113. The final report of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) clearly stated that violence against women was on the increase and had become a matter of urgent

concern. The principles to be adopted by the Sub-Commission should clearly reflect that concern, particularly with regard to girl children. She was surprised that Mr. Chernichenko's report on gross violations of human rights as an international crime contained no reference to the use of rape of detained women and girls as a weapon of war.

114. The Working Group on Detention, should study the detention of women and girls, particularly cases of arbitrary detention and pre-trial detention. She welcomed the fact that it was to examine the question of juvenile courts. She also welcomed the inclusion of the topic of the detention of minors, whether girls or boys, in the agenda of the Working Group on Contemporary Forms of Slavery.

115. Mr. CHANGALA (Service Peace and Justice in Latin America) said that a very high percentage of persons in detention in Latin America had never been finally sentenced. In the region as a whole, the average was over 75 per cent of all prisoners and in some cases, such as Uruguay, the figure was closer to 85 per cent. In many cases, persons had already served the term to which they were sentenced before the verdict was pronounced. That was contrary to the right to a trial without undue delay. The report on the right to a fair trial (E/CN.4/Sub.2/1994/24) should pay greater attention to the subject.

116. Moreover, the conditions in Latin American prisons were such, for both convicts and persons in pre-trial detention, that the punishment went far beyond deprivation of liberty and frequently resulted in an irreparable deterioration in their human dignity. The human rights situation of detained minors was especially disturbing. In addition to abominable confinement conditions and a lack of clear and effective educational policies, the legislative and judicial shortcomings were even greater than in the case of adults.

117. The draft body of principles annexed to the report stated (para. 44) that "Military courts do not have legal authority over civilians except in narrowly defined circumstances, for example, when the civilian has committed an offence in a military facility". His organization could not accept that principle since it left open the possibility of extending the jurisdiction of the military courts, the scope of which had been very precisely and restrictively defined by the Inter-American Commission on Human Rights as special courts intended exclusively to maintain the discipline of the security forces.

The meeting rose at 6 p.m.